IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

RCRev..No. 542 of 2005(A)

R.C.A.NO.150/2001 OF RENT CONTROL APPELLATE AUTHORITY, (DISTRICT JUDGE) THALASSERY.
R.C.P.NO.90/2000 OF RENT CONTROL COURT (ADDITIONAL MUNSIFF) KANNUR.

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REVISION PETITIONER/APPELLANT/RESPONDENT:

MAKKUNATH EKKALIL MOHAMMED IBRAHIM,
S/O.AHAMMEDKUTTY, AGED 50 YEARS,
RESIDING AT MAKKUNATH EKKALIL HOUSE,
MAVILAYI AMSOM, DESOM, POST MAVILAYI.

BY ADV. SRI.P.M.PAREETH.

RESPONDENTS/PETITIONERS/PETITIONERS:
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1. **PALLIKKUNNUMMEL MANOHARAN,**
   S/O.LATE BALAKRISHNAN NAIR, AGED 47 YEARS,
   `RAJESWARI BHAVAN', POOTHAPARA,
   AZHIKODE, KANNUR.

2. **SHAHIN RAVEENDRAN, S/O.RAVEENDRAN,**
   AGED 33 YEARS, RESIDING AT SANGEETHA,
   THALAP, KANNUR.

BY ADV. SRI.V.R.KESAVA KAIMAL,
ADV. SRI.N.M.MADHU.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.C.R. NO. 542/2005:

ORDER ON I.A. NOS. 3190/05 & 2849/06 IN R.C.R. NO. 542/2005

DISMISSED

SD/- K. BALAKRISHNAN NAIR, JUDGE.

10/10/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

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prv.

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

RCR No.542 of 2005-A

Order

Balakrishnan Nair, J.

The tenant is the revision petitioner. The respondents are the landlords. The landlords filed the Rent Control Petition under Sections 11(2)(b) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The Rent Controller allowed the petition on both the grounds. The Appellate Authority affirmed the same. Against the concurrent findings on those two points, this RCR is filed.

2. The brief facts of the case are the following. The parties are hereinafter referred to as they are arrayed in the Rent Control Petition for the sake of convenience. The petition schedule building belongs to one Smt.Sharada. The respondent was a tenant under her on oral rental arrangement. The rent was Rs.175 per month. In 1995, Smt.Sharada assigned the building in favour of the petitioners. The tenant attorned to them. But the rent was kept in arrears from 1995. The tenant, who got employment in Bombay sub-let the petition schedule building to a third party. Hence the RCP under Sections 11(2)(b) and 11(4)(i).

3. In the RCP, the tenant filed a counter statement, contending that he took the building under a rent deed executed by one Shri.Premarajan. The said Premarajan died in 1993 and thereafter, the rent was being paid to his widow Smt.Sujatha Premarajan. The petitioners did not inform the assignment of the property in their favour. Rent up to December 1999 was paid to Smt.Sujatha and she was receiving it also. When the tenant went to Bombay to visit a friend, who was undergoing treatment there, a lawyer notice was received from the petitioners landlords, making unfounded allegations. He sent his reply to it showing the correct facts.

4. On the basis of the above pleadings, the Rent Controller raised the necessary issues. PW1 and PW2 were examined from the side of the petitioners and Exts.A1 to A4 were marked from their side. The tenant got himself examined as RW1 and Exts.B1 to B7 were marked from his side. The Commissioner's report Ext.C1 was also marked. The trial court found that Smt.Sharada assigned the property in favour of the landlords by Ext.A1 dated 02.06.1995. The court also believed the statement of the petitioners that they informed the tenant about the transfer of ownership of the property to the tenant. Even thereafter, no rent was paid. Therefore, the claim under Section

11(2)(b) was upheld. The said finding of the Rent Controller was assailed before the Appellant Authority, mainly relying on Exts.B1 and B2. Ext.B1 is a receipt issued by Smt.Sujatha premarajan on 05.11.1995 for receiving the rent of Rs.175/- for the petition schedule building. Ext.B2 is a receipt issued by her on 31.12.1999. The specific case of the tenant was that he was never informed of the change of ownership of the property and therefore, he paid the rent upto December 1999 to Smt.Sujatha Premarajan. But the Appellate Authority noticed that Exts.B1 and B2 were not properly proved by examining Smt.Sujatha. So the case of the tenant that he paid rent to the widow of Shri.Premarajan, was disbelieved by the Appellate authority. It was held that there is failure to tender the rent to the landlords. Based on Ext.A1, it was found that rent is due from June 1995 @ Rs.175 per month. So, on the basis of the said findings, the eviction was ordered under Section 11(2)(b). The learned counsel for the tenant contended before us that the landlords never informed him about the change of ownership of the property in 1995 and therefore, the courts below should have disbelieved the said version of the owners of the building. Having regard to normal human conduct, persons who purchase a property with tenants, will normally inform them regarding the change of

ownership of the property. So, if the courts below believed the version of the landlords that they had intimated the change of ownership to the tenant, the same cannot be described as a perverse finding, warranting interference by this Court. If that be so, even assuming the rent was offered to Smt.Sujatha Premarajan and she received it, that will not amount to legal tender of rent and therefore, we are inclined to uphold the finding of the Appellate Authority under Section 11(2)(b).

5. Based on the receipt of lawyer notice by the tenant at Bombay and also the Commissioner's report that one Shri.Prasannan and his father Achuthan were in the tenanted premises, the Rent Controller allowed the application under Section 11(4)(i) also. The said finding was affirmed by the Appellate Authority after referring to the evidence on record. The RCP was filed on 06.04.2000. When the Commissioner inspected the premises on 30.04.2000, it was noticed that a stationery business was being run there by one Shri.Prasannan. His father Shri.Achuthan was present at the time of inspection. He told the Commissioner that the stationery shop was being run by Shri.Prasannan and the said Prasannan was paying rent to the wife of the tenant. The Appellate Authority also noticed the receipt of Ext.A2 lawyer

notice by the tenant in Bombay. Further, the renewal of licence by paying the licence fee in the Municipality and payment of profession tax etc. were done after the receipt of the notice by the tenant. So the Appellate Authority declined to act on those documents, which were obviously created after the dispute arose. It was noticed that between 17.01.1995 and the date of receipt of notice, there was no renewal of licence or payment of profession tax. Based on the above materials, the Appellate Authority held that the tenant was bound to explain, how the said Prasannan was present in the tenanted premises. His capacity with reference to the business is to be explained by the tenant. He failed to do that. Therefore, the Appellate Authority presumed existence of sub-tenancy. But, it was argued before the Appellate Authority that the sub-tenancy was not objectionable. In support of that submission, it was contended that the terms of the tenancy were not placed before the Court. Unless the terms are proved, it cannot be contended that the sub-tenancy is objectionable. The Appellate Authority noticed the contention of the landlords that the arrangement between the original owner of the building and the tenant was an oral rental arrangement. On the contrary, the tenant contended that there was a rent deed, executed by him in favour of Shri.Premarajan. But the tenant

failed to produce the said deed or prove its contents. Based on the pleadings in the RCP and the prayer in it, the Appellate Authority held that the sub-tenancy was created without the permission of the landlords and therefore, it should be treated as objectionable. Based on that finding, the relief granted under Section 11(4)(i) was also affirmed. The learned counsel for the tenant vehemently contended that unless the sub-tenancy is objectionable, the same cannot be a ground for eviction. We notice that the case of the tenant regarding sub-tenancy was one of total denial. Since the landlords pleaded only oral arrangement, they cannot prove the terms of the tenancy. But, they have succeeded to show that it was done without their consent and therefore, objectionable. The tenant claimed that he was inducted under a written rent deed. If that be so, he could have produced it and showed that as per the terms of the rent deed, the sub-tenancy was not objectionable. The tenant has filed to prove that. It cannot be disputed that the sub-tenancy in this case was without the permission of the landlords. Therefore, normally, it can be presumed to be objectionable unless the tenant establishes the sub-tenancy to be permissible. In this case, the tenant has failed to prove that. So, the finding of the Appellate Authority regarding the sub-tenancy and also the finding that

the same is objectionable, cannot be said to be illegal or irregular, warranting interference by this Court in revision. In the result, the RCR fails and it is dismissed. The learned counsel for the petitioner prayed for some time to vacate the premises. Since of the order of eviction is based on the finding under Section 11(4)(i) also, we are not inclined to grant any time to the tenant to vacate the premises.

K.BALAKRISHNAN NAIR,JUDGE

10.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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